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## Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40 -80
<b>Regulation title</b>	General Procedures and Information for Licensure
<b>Action title</b>	Amend as a result of periodic review and changes made to Code of Virginia
<b>Document preparation date</b>	Enter date this form is uploaded on the Town Hall

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The amendments to this existing regulation incorporate changes that have been made to the Code of Virginia since the last revision of the regulation. This regulation contains general requirements that are applicable to all the department's licensed programs but that are not included in the programmatic regulations. The regulation explains the application and licensing processes and the responsibilities of both the department and the applicant or licensee in those processes. These amendments reflect the current practices of the department as they relate to subject facilities. The most substantive changes were made to PART VIII. regarding sanctions because amendments have been made to the Code of Virginia regarding negative actions since the regulation was last revised. Also, upon the advice of the Office of the Attorney General, a new part related to hearing procedures has been added. These procedures affect licensed facilities when they are involved in negative actions. The department was advised that these procedures should be promulgated and that this regulation was the appropriate place for them.

## Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On June 16, 2004, the State Board of Social Services adopted the final regulatory package for the regulation entitled General Procedures and Information for Licensure 22 VAC 40-80.

## Legal basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The Code of Virginia gives the State Board of Social Services authority to adopt regulations for its licensed programs. Section 63.2-217 gives broad authority for the Board to adopt regulations as are necessary or desirable to carry out the purpose of Title 63.2. Sections 63.2-1732, 63.2-1733 and 63.2-1734 give the Board authority to adopt and enforce regulations to carry out the provisions of Title 63.2 regarding assisted living facilities, adult day care centers, and child welfare agencies, respectively.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

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This regulation contains the general requirements that are applicable to all the department's licensed programs. The Code of Virginia requires that application fees be charged; that applications be filed and certain types of licenses issued; that investigations be conducted; that records be maintained by licensed facilities; that variances can be granted; and that regulations be adopted for the commissioner to use in determining when to impose sanctions. This regulation contains the department's rules to carry out these provisions.

This regulation protects the health, safety and welfare of adults and children receiving care in licensed facilities by ensuring that procedures are in place for both the department and the licensee to follow in the licensure process required by the Code. It also provides for sanctioning and termination of licensure when health and safety requirements are not met.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

## PART I. INTRODUCTION

Definitions are added, amended or deleted as necessary to best explain the standards.

## PART II. LICENSING STANDARDS

The name of “adult care residence” is changed to “assisted living facility.” Reference to “child day center system” is deleted because this program no longer exists.

## PART III. THE LICENSE

“Limited liability company” is added to the list of organizations that may apply for a license to operate a facility or agency.

A list of “offenses” that may cause a licensee to be guilty of a Class I misdemeanor is added.

Exceptions that allowed an existing assisted living facility to receive a second conditional or provisional license with the approval of the State Fire Marshal were deleted.

An exception is added that specifies that child day centers will receive a license for two years.

A standard now requires that the most recent violation notice be posted in the facility or agency rather than allowing the licensee to post a notice indicating where it may be viewed in the facility.

## PART IV. THE LICENSING PROCESS

A new standard now requires that all applicants for licensure attend pre-application orientation. Options are provided for how the training may be obtained.

A new standard amends the requirements regarding frequency of inspections in licensed facilities.

Amendments were made to the standard regarding early compliance to require that a facility must request early compliance after a conditional or provisional license prior to the mid-point of the licensure period or within 90 days of the expiration of the conditional or provisional license, whichever comes first.

Amendments specify that in order for a renewal application to be considered complete, the licensee must have paid any outstanding civil penalty assessed after a final order.

Amendments specify that the department will not process a renewal application when the current license is being denied or revoked in accordance with the Administrative Process Act.

## PART V. ALLOWABLE VARIANCES

In PART I. the definition of “allowable variance” was amended to reflect the intent of the Code of Virginia, thus duplicative information was deleted.

The requirements were amended to allow applicants or licensees to submit new material within 30 days if a request for an allowable variance is denied, but makes it clear that the decision regarding the second request will be considered final and cannot be appealed.

## PART VII. COMPLAINT INVESTIGATION

The standard providing for a parental hotline was expanded to establish a toll-free telephone number to receive complaints on all licensed facilities.

PART VIII. SANCTIONS

This part was amended to incorporate provisions in the Code of Virginia for special orders and other changes that are related to the imposition of administrative sanctions against licensed facilities.

A chart was added to explain the appeal process steps when administrative sanctions are imposed.

A new standard was added to provide information about steps that can be taken to collect unpaid civil penalty payments.

PART IX. APPEALS AND HEARINGS

This is an entirely new section of the regulation added upon the advice of the Office of the Attorney General to incorporate the department’s procedures for hearings related to adverse actions. A dated version of the procedures exists but it has never been promulgated. It has now been updated and the Office of the Attorney General recommends that it be incorporated into this regulation.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

The advantage of this regulation to applicants and licensees is that they are made aware of the general licensing standards they will be required to meet. This is also advantageous for licensing staff because implementation is consistent for all licensed programs. There are no disadvantages to the public or the Commonwealth because of this regulation.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

Section number	Requirement in proposed regulation	Proposed change in final regulation and rationale
*22 VAC 40-80-10		*Added definition of “substantial compliance” at suggestion of licensing staff. This definition is already used by the department in a guidance document entitled “Performance Based Licensing and Monitoring.”

<p>22 VAC 40-80-60</p>	<p>Inserted “the operation of” between “respect to” and “any assisted.” On the last line, changed “on” to “in.”</p>
<p>*22 VAC 40-80-120</p>	<p>*Merged standards B. and C. with standard A. for clarity. Content did not change. Changed “facility/agency” to “facility or agency.”</p>
<p>22 VAC 40-80-130</p>	<p>A. Deleted “department’s” because the regulations are either State Board’s or Child Day-Care Council’s.</p>
<p>22 VAC 40-80-340</p>	<p>(4) (b) replaced “it has been” with “the Commissioner has.”                  (4)(c) inserted “provisional licenses” between “announcements” and “and denial.”                  (4)(d) ) replaced “it has been” with “the Commissioner has.”</p>
<p>*22 VAC 40-80-370</p>	<p>*A. Amended the fourth sentence to clarify language regarding appeal of notice of adverse action.                  *C. Amended to clarify language regarding appeal of the notice of adverse action.                  Both changes made at request of Assistant Attorney General.</p>
<p>22 VAC 40-8--375</p>	<p>*After “overdue” added “provided the total of the civil penalty and late fee do not exceed the penalty set forth in § 63.2-1709 Code of Virginia.” A new subsection (C) was added to say, “If a licensee appeals the imposition of a civil penalty, the provisions of this section shall not apply until the appeal is completed.”</p>
<p>*22 VAC 40-80-420</p>	<p>*Added a new paragraph C. as requested by the Assistant Attorney General.</p>
<p>22 VAC 40-80-430</p>	<p>B. Deleted “Elements of an acceptable consent agreement” at beginning of the standard because it is an unnecessary phrase.                   D. Deleted “Oversight responsibilities during the effective dates of consent agreement” at beginning of the standard because it is an unnecessary phrase.</p>
<p>*22 VAC 40-80-490</p>	<p>*B. Changed “should” to “shall” in second sentence. Changed “should” to “may” in last sentence. Change made on advice of Assistant Attorney General.</p>

*22 VAC 40-80- 510		*D. Changed “should” to “may” in last sentence. Change made on advice of Assistant Attorney General.
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**Public comment**

*Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.*

Commenter	Comment	Agency response
Home child care provider	“The amendments seem in order to me. I agree.”	No response necessary.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-80-10		Contains definitions of terms used in the regulation.	<p>Deleted the definition of “allegation” and combined it with the definition of “complaint.”</p> <p>Amended the definition of “allowable variance” to more closely reflect the definition in the Code of Virginia.</p> <p>Added the definition of “day” to mean calendar day for clarification.</p> <p>Amended the definition of “early compliance” to make it clear that the licensee must demonstrate full compliance with licensing requirements in order to qualify for early compliance.</p> <p>Amended the definition of “licensee” to include limited liability company.</p> <p>Added a definition of “substantial compliance” at the suggestion of licensing staff. This definition is already used by the department in a guidance document entitled “Performance Based Licensing and</p>

<p>22 VAC 40-80-30</p>			<p>Monitoring.”</p> <p>Added several new definitions related to hearing procedures because a new Part regarding hearings has been added to the regulation.</p>
<p>22 VAC 40-80-60</p>			<p>Changed “adult care residences” to “assisted living facilities.”</p> <p>Deleted “child day center systems” because the program no longer exists.</p> <p>Added information from the Code of Virginia about certain acts that might make a licensee subject to a Class 1 misdemeanor. Prior to recodification of Title 63.1, this information applied only to assisted living facilities, but it is now applicable to all licensed facilities.</p>
<p>22 VAC 40-80-80</p>		<p>An exception to the requirement allowed a second conditional license to be issued with approval of the State Fire Marshal when a licensee purchased an existing assisted living facility.</p>	<p>Deleted the exception allowing a second conditional license to be issued with approval of the State Fire Marshal when a licensee purchased an existing assisted living facility. The need for this exception has not existed since the early 1990’s when existing assisted living facilities were required to install fire alarm systems and AC or battery powered smoke detectors to meet current building code requirements.</p>
<p>22 VAC 40-80-100</p>			<p>Added an exception that reflects a Code change that states that the licensure period for child day centers will be for a period of two years, except for conditional or provisional licenses. All other licensed facilities may continue to receive licenses for one, two or three years, based on activities, services, management and compliance history.</p>
<p>22 VAC 40-80-110</p>		<p>An exception to the requirement allowed a second provisional license to be issued with approval of the State Fire Marshal when a licensee purchased an existing assisted living facility.</p>	<p>Deleted the exception allowing a second provisional license to be issued with approval of the State Fire Marshal when a licensee purchased an existing assisted living facility. The need for this exception has not existed since the early 1990’s when existing assisted living facilities were required to install fire alarm systems and AC or battery powered smoke detectors to meet current building code requirements.</p>
<p>22 VAC 40-80-120</p>		<p>Lists the terms of a license and requires that certain documents that are</p>	<p>Merged standards B. and C. with standard A. for clarity. Content did not change. Amended G. (changed to E.) to require that</p>

<p>22 VAC 40-80- 130</p>		<p>required to be posted, be posted at each public entrance. Allows the facility to post a written notice of where a violation notice can be reviewed in the facility.</p> <p>Current requirement informs licensees of the availability of pre-application consultation.</p>	<p>the documents that must be posted in a facility be posted in a conspicuous place on the licensed premises so that they can be visible to the public.</p> <p>Amended G. to require that the most recent violation notice be posted in a conspicuous place on the premises, rather than allowing the facility to post a written notice of where the violation notice could be reviewed in the facility. Violation notices should be located in the facility where consumers can most readily see them.</p> <p>The department now offers many additional services including ongoing technical assistance and formal training sessions. The standard is being expanded to include information about the availability of these additional services.</p> <p>A new requirement was added for pre-application orientation for all applicants for licensure. The Code of Virginia mandates this for assisted living facilities and the department currently makes such training available for applicants of all licensed programs. The new standards include provisions for applicants to receive orientation from a source other than the department. There is also a provision that applicants for adult day care centers and child welfare agencies may be exempt from the pre-application orientation if notified by the department that such training is unavailable. There is no charge for the orientation.</p> <p>This is a substantial change. Pre-application orientation that is focused on health and safety issues and residents' rights is mandated for applicants for licensure of assisted living facilities. Pre-application orientation has been made available since approximately January 2001 for applicants for all the department's licensed programs; however, this orientation has been optional for child welfare agency and adult day care center applicants. Pre-licensure orientation has been well-received by both voluntary and mandatory trainees. Voluntary attendance by child care and adult day care applicants has been quite good; however, despite encouragement, those who need the orientation most may choose not to attend.</p>
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<p>22 VAC 40-80- 140</p>		<p>The regulation currently includes information that a list of licensing offices and their locations and telephone numbers is included as an attachment to the regulation.</p>	<p>Licensing inspectors have noted that licensees' attendance at pre-application orientation has improved compliance in their facilities.</p> <p>The information that a list of licensing offices and their addresses and telephone numbers is included as an attachment is being deleted. This information changes frequently and should not be promulgated. The information is available to the public in a separate document.</p>
<p>22 VAC 40-80- 150</p>		<p>Currently there is no time limit regarding when the department will issue a Preliminary Approval Statement after receipt of a complete floor plan.</p>	<p>Standard A.3. is amended to state that the department will issue a Preliminary Approval Statement within 20 days of receipt of a complete floor plan.</p>
<p>22 VAC 40-80- 160</p>			<p>Amended B. by adding a note that references the department's background check regulations.</p> <p>Amended C. by adding an exception referencing a Code exception for inspection of financial records of child welfare agencies.</p> <p>Amended D. to add the licensee's "designee" to those persons with whom the licensing representative may discuss investigation findings.</p>
<p>22 VAC 40-80- 170</p>		<p>Current standard B. states that a letter will accompany a conditional or provisional license but not a regular license.</p>	<p>Deleted B. because it is not necessary to promulgate this information.</p>
<p>22 VAC 40-80- 180</p>			<p>Amended C. to reflect changes to the Code of Virginia regarding frequency of inspections for various licensed facilities and whether they are to be announced or unannounced.</p> <p>Moved the requirement that states that the department may conduct other announced and unannounced inspections as are considered appropriate. (Not a change.)</p>
<p>22 VAC 40-80- 190</p>			<p>Amended B. to state that the department will issue a modified license without sending a letter. This reflects current practice.</p>

<p>22 VAC 40-80- 210</p>			<p>Amended A. to newly require that in order for a renewal application to be considered complete, the licensee must have included all required information and paid any outstanding civil penalty assessed after a final order. (The material to be included with the renewal application is listed on the application.)</p> <p>Amended B. to newly state that the department will not process a renewal application that is not complete and that a renewal application will not be processed when the current license is being denied or revoked in accordance with the Administrative Process Act.</p> <p>Amended C. to newly clarify that when a license expires before a new license is issued, the current license will remain in effect provided that the completed application was filed prior to the expiration of the current license and a decision for licensure is pending.</p>
<p>2 VAC 40-80- 220</p>		<p>Currently the definition of allowable variance is not with other definitions.</p>	<p>Repealed the standard to eliminate duplication because the definition of allowable variance is now in 22 VAC 40-80-10.</p>
<p>22 VAC 40-80- 240</p>		<p>Currently B. states that the department will notify the petitioner when his request has been received.</p> <p>Currently D. provides for a desk review after the department has denied a request for an allowable variance.</p>	<p>B. is amended to state that the department's licensing representative will notify the petitioner when a decision is made about the request for an allowable variance.</p> <p>D. is amended to provide for the petitioner to make a second request for an allowable variance if additional information can be provided. Moved the statement that the decision after the second review will be considered final and cannot be appealed. This was previously a separate standard. Added a NOTE to D. that provides for the applicant or licensee to submit a new allowable variance request after a 30-day period describing changed conditions.</p>
<p>22 VAC 40-80- 270</p>		<p>The standard currently allows the licensee to make a request for a second step review in writing and to specify whether he wants a conference or a desk review.</p>	<p>Amended C. and E. to provide for a desk review at the second step review, but added a statement that the department will respond to the applicant or licensee in writing with the results of either the desk review or to schedule a conference.</p>

<p>22 VAC 40-80- 290</p>		<p>Currently the standard states that a toll-free hot line is available to receive complaints on child care operations.</p>	<p>The standard was amended to provide information that the department operates a toll-free telephone line to receive complaints on all licensed facilities.</p>
<p>22 VAC 40-80- 340</p>			<p>The standard was amended to provide information about the imposition of administrative sanctions and the reasons that the department may consider the imposition of administrative sanctions. Prior to the recodification of Title 63.1 (now Title 63.2), some administrative sanctions were different for assisted living facilities, adult day care centers, and child welfare agencies. Recodification made them the same except for petitioning the court for appointment of a receiver for assisted living facilities and adult day care centers, which does not apply to child welfare agencies.</p>
<p>22 VAC 40-80- 370</p>			<p>This standard was amended to more clearly explain the appeal process when the department imposes an administrative sanction. A chart was added to explain the appeal steps. *Amended A. and C. to clarify language regarding appeal of notice of adverse action.</p>
<p>PART IX.</p>			<p>This totally new Part relates to the department's procedures for appeals and hearings. The department has had procedures for these processes, but they were never promulgated and are out of date. The procedures have been revised with input from the Office of the Attorney General. Counsel has advised the department that these procedures must be promulgated and recommends placement in this regulation.</p>
<p>*22 VAC 40-80- 420</p>			<p>*Since the proposed regulation was published a new standard C. was added regarding informal conferences.</p>
<p>*22 VAC 40-80- 490</p>			<p>*Since the proposed regulation was published, the following changes have been made: B. Changed "should" to "shall" in the first sentence. Changed "should" to "may" in the last sentence.</p>

<p>*22 VAC 40-80- 510</p>			<p>Changes made on advice of Assistant Attorney General.</p> <p>*Since the proposed regulation was published, the following change has been made: *D. Changed “should” to “may” in the last sentence. Change made on advice of Assistant Attorney General.</p>
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**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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This regulation will have little impact on the institution of the family or on family stability. It will not strengthen or erode the authority or rights of parents in the education, nurturing and supervision of their children; it will not encourage or discourage economic self-sufficiency, self-pride, ore the assumption of responsibility; it will not strengthen or erode the marital commitment; and it will not increase or decrease disposable family income. It will, however, ensure that there are procedures in place to allow for sanctioning and termination of adult and children’s facilities when health and safety requirements are not being met. This, in essence, strengthens the family institution indirectly.